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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,695	12/08/2000	Gutman Levitan	HBK-02802/03	2885
25006	7590	10/19/2005	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C			HOYE, MICHAEL W	
PO BOX 7021			ART UNIT	
TROY, MI 48007-7021			PAPER NUMBER	
			2614	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/732,695

Applicant(s)

LEVITAN ET AL.

Examiner

Michael W. Hoye

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicants' arguments, see page 4 of the Remarks, filed on July 21, 2005, with respect to the rejection of claims 8 and 11 under 35 U.S.C. § 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 U.S.C. § 103(a) in view of Rosser (USPN 6,446,261), in further view of Bedard (USPN 5,801,747).

Regarding the Applicants' comments/arguments (see the last paragraph of page 4 in the Remarks section), as related to the claimed "timetable file" which state that, "The timetable file thus serves a dual purpose: first, it acts as an electronic TV guide to allow a viewer to select a channel for viewing from the multiple channels available; and second, it provides the information necessary for making the decisions as to which sections of the transmitted program should be replaces by information stored in recorder 34 or being transmitted on an alternative channel."

The Examiner notes that the Rosser Patent discloses the claimed "means for transmitting over one of said television channels to a viewer's receiver, a timetable file with descriptive and time/channel data relating to the commercial components of the transmitted television channels and data relating to alternative commercial components which may be used to replace commercial components of said programs" as met by col. 15, line 55 - col. 16, line 10, which discloses that a table is created remote from a user that includes data related to viewer profiles and video indicia or sequences, which are related to the commercial components of transmitted

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television channels, and the table or “timetable file” is transmitted over a television channel and stored in the user’s device. The table as described above includes encoded data pertaining to where and when to insert video indicia or sequences, which is the equivalent of a “timetable”, and the table or “timetable” is transmitted by a video distribution mechanism to a set-top device for storage, where the table is the equivalent of a “timetable file” as claimed. Once a commercial is identified as a match for the local profile, the commercial is substituted “for commercials transmitted with the program material on the selected channel under control of the stored profile of the viewer’s demographic information and said descriptive and time/channel data” as claimed (col. 13:37-40). These commercials are retrieved from local storage 152 and displayed to viewers as taught in col. 13:24-36. Rosser also discloses the claimed “means for allowing a user to select one channel for viewing” as met by col. 11, lines 27-39, where, “the viewer interacts with their television set via the remote control device 71, or other similar viewer controlled device such as but not limited to, buttons or switches on the viewer set or set top device. The viewer operations of ... channel selection ... and other viewer usage choices are handled by the viewer control interface 148, which may be a graphic user interface displayed on the viewers television or video display. The viewer requests are passed on to the central controller 146, which is typically a programmed micro-processor, as is well known in the art of embedded control technology.” The Rosser Patent does not explicitly disclose the claimed “means for allowing a user to select one channel for viewing from said timetable file”, where the “timetable file” acts as an electronic TV guide to allow a viewer to select a channel for viewing from the multiple channels available. However, the Bedard Patent discloses or teaches a method and apparatus for monitoring television viewing activity to determine preferred categories of

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programming and preferred channels of a viewer. Furthermore, in order to facilitate viewer access to preferred programming, Bedard teaches the use of displaying an electronic program guide, which may be configured according to the monitored viewing activity to provide fast access to preferred programming... (See Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the Rosser patent with the additional teachings of the Bedard patent which incorporates the use of an electronic program guide for the advantage of providing the viewer with a timetable file which uses a graphical user interface that further includes descriptive and time/channel data relating to the transmitted television programs. One of ordinary skill in the art would have been led to make such a modification since the use of electronic program guides (EPGs) is well known in the art of interactive television distribution systems.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosser (USPN 6,446,261), in view of Bedard (USPN 5,801,747), both cited by the Examiner.

As to claim 8, Rosser teaches a communication system and method with demographically defined audiences for providing targeted commercials. The claimed "system for delivery of different versions of the same television program depending on viewer's information stored

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viewer's receiver" is met by Rosser with reference to Figure 4, showing a receiver system storing a demographic profile at 170. A plurality of "basic channels for transmitting primary versions of television programs containing commercials that may be replaced by alternative video fragments for producing alternative versions of those television programs" are provided via sources 134 and 136. Alternative commercials are provided over an alternative video or television feed as taught in col. 13: 13-23. Default programming and commercial alternatives are transmitted to receivers in the network which compare locally stored (170 of Fig. 4) personal profile / demographic data to select a targeted commercial for display (col. 4:31-41). The claimed "means for transmitting over one of said television channels to a viewer's receiver, a timetable file with descriptive and time/channel data relating to the commercial components of the transmitted television channels and data relating to alternative commercial components which may be used to replace commercial components of said programs" is met by col. 15, line 55 - col. 16, line 10, which discloses that a table is created remote from a user that includes data related to viewer profiles and video indicia or sequences, which are related to the commercial components of transmitted television channels, and the table or "timetable file" is transmitted over a television channel and stored in the user's device. The table as described above includes encoded data pertaining to where and when to insert video indicia or sequences, which is the equivalent of a "timetable", and the table or "timetable" is transmitted by a video distribution mechanism to a set-top device for storage, where the table is the equivalent of a "timetable file" as claimed. Once a commercial is identified as a match for the local profile, the commercial is substituted "for commercials transmitted with the program material on the selected channel under control of the stored profile of the viewer's demographic information and said descriptive

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and time/channel data” as claimed (col. 13:37-40). These commercials are retrieved from local storage 152 and displayed to viewers as taught in col. 13:24-36. Rosser also discloses the claimed “means for allowing a user to select one channel for viewing” as met by col. 11, lines 27-39, where, “the viewer interacts with their television set via the remote control device 71, or other similar viewer controlled device such as but not limited to, buttons or switches on the viewer set or set top device. The viewer operations of ... channel selection ... and other viewer usage choices are handled by the viewer control interface 148, which may be a graphic user interface displayed on the viewers television or video display. The viewer requests are passed on to the central controller 146, which is typically a programmed micro-processor, as is well known in the art of embedded control technology.” The Rosser Patent does not explicitly disclose the claimed “means for allowing a user to select one channel for viewing from said timetable file”, where the “timetable file” acts as an electronic TV guide to allow a viewer to select a channel for viewing from the multiple channels available. However, the Bedard Patent discloses or teaches a method and apparatus for monitoring television viewing activity to determine preferred categories of programming and preferred channels of a viewer. Furthermore, in order to facilitate viewer access to preferred programming, Bedard teaches the use of displaying an electronic program guide, which may be configured according to the monitored viewing activity to provide fast access to preferred programming... (See Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the Rosser patent with the additional teachings of the Bedard patent which incorporates the use of an electronic program guide for the advantage of providing the viewer with a timetable file which uses a graphical user interface that further includes descriptive and time/channel data relating to

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the transmitted television programs. One of ordinary skill in the art would have been led to make such a modification since the use of electronic program guides (EPGs) is well known in the art of interactive television distribution systems.

With respect to claim 11, Rosser as combined with Bedard, teaches the claimed said means for transmitting a timetable file with descriptive and time/channel data includes such data for the commercial segments which are stored in col. 15:35+ through col. 16:10, as described above, for determining when and which commercial to select for presentation to a viewer.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is **571-272-7346**.

The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

**Any response to this action should be mailed to:**

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **571-272-2600**.

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Michael W. Hoyer  
October 4, 2005



**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**